

Message

---

**From:** Carl Garvey [cgarvey@racetrust.org]  
**Sent:** 1/28/2021 6:08:05 PM  
**To:** Doyle, James [Doyle.James@epa.gov]; Ludmer, Margo [ludmer.margo@epa.gov]; Cirillo, Argie [Cirillo.Argie@epa.gov]  
**CC:** Lieber, Thomas [Lieber.Thomas@epa.gov]  
**Subject:** RE: RACER Sur-Reply  
**Attachments:** 1994 EPA CERCLA Allocation Guidance.pdf

Hi Jim: Thanks for the quick reply. I'm free for a call with you and your team (and Tom) at your convenience. As I mentioned in my email msg from earlier this week, our Sur-Reply Brief needs to be to the 2<sup>nd</sup> Circuit by Feb. 5<sup>th</sup>, but I don't know the date by which amicus briefs would be due.

RACER's litigation pertains to GM-IFG Subsite's OU-2 (Ley Creek) RD/RA. But since RACER funding earmarked for OU-1 could still be brought to the table to help fund the OU-2 RA, I've included Argie. As you may recall, RACER has one combined Annual Cleanup Budget for the two OUs, with specific tasks and funding amounts designated for each OU.

Also, as we noted in our comments/edits to the draft RD AOC for OU-2, we recommend that the Region 2 drop the references to "Ley Creek Deferred Media" or "LCDM". In RACER's years of working on OU-2 issues with NYSDEC as Lead Agency, OU-2 has never been referred to as such. And the continued characterization of the OU-2 impacted materials as "deferred media" causes confusion as to why a remedy for such media was "deferred." Such remedy is no longer being deferred, so just going by OU-2 seems more straightforward at this point.

Here's that attachment again – it's the 1994 Allocation Guidance, which I'm sure you have access to anyway.

One other related item – RACER is working with our expert consultant TIG Environmental to prepare and transmit to Margo the congener-specific data that we have generated in the past two or so years from soil samples taken from the IFG Facility, the OU-2 ROD Area, the OU-2 Expanded Area, and the NYS Thruway Authority parcel east of Townline Road. Margo has requested such information, as you know. TIG Environmental has recommended we schedule with you and Margo (and whomever else at Region 2 needs to be on it) a webinar-type call in which their experts can present the data. After that, TIG Environmental or RACER will transmit the data to Margo. The presentation will likely be ready by mid-February.

Thanks again. --Carl

---

**From:** Doyle, James <Doyle.James@epa.gov>  
**Sent:** Thursday, January 28, 2021 12:32 PM  
**To:** Carl Garvey <cgarvey@racetrust.org>; Ludmer, Margo <ludmer.margo@epa.gov>; Cirillo, Argie <Cirillo.Argie@epa.gov>  
**Cc:** Lieber, Thomas <Lieber.Thomas@epa.gov>  
**Subject:** RE: RACER Sur-Reply

Let's discuss. This is LCDM exclusively, correct? Or does it implicate the IFG facility OU too? Wondering about Argie's participation... Tom may want to be brought in at this juncture.

I cannot open the attachment yet (scanning).

---

**From:** Carl Garvey <cgarvey@racetrust.org>  
**Sent:** Thursday, January 28, 2021 12:21 PM  
**To:** Ludmer, Margo <ludmer.margo@epa.gov>; Cirillo, Argie <Cirillo.Argie@epa.gov>; Doyle, James

<Doyle.James@epa.gov>

**Subject:** RACER Sur-Reply

Hi Margo, Argie, and Jim:

Would Region 2 (through Main Justice or the USAO) be willing to file an amicus brief with the 2<sup>nd</sup> Circuit to clarify that at the outset of USEPA's CERCLA enforcement actions, it typically does not perform allocation functions -- instead it simply issues notifications of potential liability to PRPs and then lets CERCLA's joint and several liability scheme work among the named PRPs.

Such an approach for PRP-directed allocation is set forth in the attached Guidance.

The Defendant-Appellees in RACER's cost recovery/contribution case appear to believe that Region 2's enforcement actions will resolve the need for a PRP-led allocation process. As you know, RACER and the Defendant-Appellees who remain in this case will still need at least the NDNY District Court's help to resolve allocation issues if/when the parties cannot agree on those.

Perhaps the Defendant-Appellees believe that Region 2 will be issuing (or needs to issue) something more than Special Notice Letters, i.e., 106 Orders including "Coordinate & Cooperate Orders"?

Please let me know if you'd like to have a call to discuss RACER's interest in having USEPA file this amicus brief. Thanks for considering this approach.

--Carl